

REMARKS

Office action summary

Claims 1, 3-6, 8-16, 18-23, and 25-29 are pending in the present application. Claims 16 and 18-22 are presently amended. No claims are presently added or canceled. In the office action of April 1, 2010 (“Office Action”), the following objections, rejections, and allowances were made:

- The specification was objected to as including terminology which is so different from that which is generally accepted in the art that correction was deemed necessary.
- Claims 16 and 18-22 were rejected under 35 USC § 101 as being directed to non-statutory subject matter.
- Claims 1, 3-6, 8-15, 23, and 25-29 were allowed.

The amendments, objections, and rejections are discussed below. The examiner is respectfully urged to reconsider the application and withdraw the rejections. Should the examiner have any questions or concerns that might be efficiently resolved by way of a telephonic interview, the examiner is invited to call applicants’ undersigned attorney, Jon M. Isaacson, at 206-332-1102.

Telephonic interview

On June 7, 2010, applicants’ undersigned attorney and Examiner Nguyen conducted a telephonic interview. Applicants’ undersigned attorney would like to thank the examiner for granting the interview. During the interview, the objection and rejection were discussed without coming to any formal agreements. Any further substance of the interview is incorporated into the remarks below.

Objection to the specification

The specification was objected to as including terminology which is so different from that which is generally accepted in the art that correction was deemed necessary. More specifically, the Office Action found that the following specification language was unclear: “methods and apparatus of the present invention may also be embodied in a program code

that can be transmitted over the transmission medium.” (Office Action, page 2.) The Office Action indicated that such language was contained in paragraph 0036 of the specification. (*Id.*) Applicants could discern no such language in paragraph 0036; however, applicants found similar language in paragraphs 0096 and 0097 of the specification.

Applicants respectfully traverse the objection. Paragraph 0096 of the specification states:

The various techniques described herein may be implemented with hardware or software or, where appropriate, with a combination of both. Thus, the methods and apparatus of the present invention, or certain aspects or portions thereof, may take the form of program code (i.e., instructions) embodied in tangible media...

Paragraph 0097 of the specification contains similar language. Applicants submit that one of ordinary skill in the art would understand that the methods and apparatus of the present invention, or aspects or portions of the present invention, could be in the form of program code, and that the program code could be embodied in tangible media. Because one of ordinary skill would understand this language in the specification, applicants respectfully submit that the specification terminology is not different from that which is generally accepted in the art, and therefore no correction is required. Accordingly, applicants respectfully request withdrawal of the objection to the specification.

Rejections under 35 USC § 101

Claims 16 and 18-22 were rejected under 35 USC § 101 as being directed to non-statutory subject matter. As of the mailing of the Office Action, claims 16 and 18-22 were each directed to a “computer-readable medium.” The Office Action found that, in light of paragraph 0097 of the specification, the term “computer-readable medium” could be read to encompass signals, and that signals do not fall into one of the four categories of statutory subject matter set forth in 35 USC § 101. (Office Action, page 3.)

Without conceding the propriety of the rejection of claims 16 and 18-22, in an effort to advance prosecution of the present application, applicants presently amend claims 16 and 18-22 to each be directed to a “*tangible* computer-readable medium” (emphasis added). Examples of tangible computer-readable media are given in paragraph 0096 of the specification, including floppy diskettes, CD-ROMs, and hard drives. In contrast to the

tangible media described in paragraph 0096, paragraph 0097 provides several examples of transmission media, such as signals transmitted over electrical wiring or cabling, through fiber optics, or via any other form of transmission. Thus, the specification defines signals as being transmission media, and does not include signals within the meaning of tangible media. Therefore, applicants respectfully submit that the term “tangible computer-readable medium,” as now recited in claims 16 and 18-22, does not encompass signals when read in light of paragraphs 0096 and 0097 of applicants’ disclosure. Accordingly applicants submit that claims 16 and 18-22 are directed to statutory subject matter, and applicants respectfully request withdrawal of the rejection of claims 16 and 18-22 under 35 USC § 101.

Conclusion

Applicants believe that the present remarks are responsive to each of the points raised by the examiner in the Office Action, and submit that claims 1, 3-6, 8-16, 18-23, and 25-29 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner’s earliest convenience is earnestly solicited.

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